MONTANA LEGISLATIVE HISTORY

Chapter 578 19 95

Bill H 587 S _____ Original bill & history X C

H. Committee on TAXATION			S. Committee on TAXATION		
Hearing Date(s)	3/14	X C	Hearing Date(s)	3/30	X C
		C	EXEC ACTION	4/7	X C
		C			C
		C			C
Date Out		C			

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

HB 584 INTRODUCED BY BERGSAGEL

APPROPRIATE FUNDS FOR THE LAW ENFORCEMENT ACADEMY PROJECT

3/07	INTRODUCED		
3/07	FIRST READING		
3/07	REFERRED TO APPROPRIATIONS		
3/15	HEARING		
3/17	COMMITTEE REPORT—BILL PASSED AS AMENDED		
3/20	2ND READING PASSED AS AMENDED	65	35
3/21	3RD READING PASSED	70	29
	TRANSMITTED TO SENATE		
3/22	FIRST READING		
3/22	REFERRED TO FINANCE & CLAIMS		
4/03	HEARING		
4/04	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
4/06	2ND READING CONCURRED	45	5
4/07	3RD READING CONCURRED	43	7
	RETURNED TO HOUSE WITH AMENDMENTS		
4/12	2ND READING AMENDMENTS CONCURRED	82	16
4/13	3RD READING AMENDMENTS CONCURRED	84	15
4/18	SIGNED BY SPEAKER		
4/18	SIGNED BY PRESIDENT		
4/18	TRANSMITTED TO GOVERNOR		
4/25	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 531		
	EFFECTIVE DATE: 04/25/95		

HB 585 INTRODUCED BY BERGSAGEL

AUTHORIZE CREATION OF STATE DEBT THROUGH ISSUANCE OF $9 MILLION OF GENERAL OBLIGATION BONDS FOR CONSTRUCTION OF REGIONAL CORRECTIONAL AND LAW ENFORCEMENT FACILITIES

3/07	INTRODUCED		
3/07	FIRST READING		
3/07	REFERRED TO APPROPRIATIONS		
3/15	HEARING		
3/17	COMMITTEE REPORT—BILL PASSED AS AMENDED		
3/20	2ND READING PASSED	93	2
3/21	3RD READING PASSED	96	3
	TRANSMITTED TO SENATE		
3/22	FIRST READING		
3/22	REFERRED TO FINANCE & CLAIMS		
3/27	HEARING		
3/28	COMMITTEE REPORT—BILL CONCURRED		
4/04	2ND READING CONCURRED	40	7
4/05	3RD READING CONCURRED	42	8
	RETURNED TO HOUSE		
4/07	SIGNED BY SPEAKER		
4/08	SIGNED BY PRESIDENT		
4/10	TRANSMITTED TO GOVERNOR		
4/14	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 475		
	EFFECTIVE DATE: 04/14/95		

HB 586 INTRODUCED BY WYATT

LIMIT CERTAIN COUNTY MILL LEVIES TO TAXABLE VALUE OF PROPERTY LOCATED OUTSIDE OF INCORPORATED CITIES AND TOWNS

3/07	INTRODUCED		
3/07	FIRST READING		

3/07	REFERRED TO TAXATION		
3/08	FISCAL NOTE REQUESTED		
3/10	HEARING		
3/10	TABLED IN COMMITTEE		
3/14	FISCAL NOTE RECEIVED		
3/29	MISSED TRANSMITTAL DEADLINE FOR 71ST DAY		
	DIED IN COMMITTEE		

HB 587 INTRODUCED BY QUILICI, ET AL.

GENERALLY REVISE CIGARETTE AND TOBACCO LAWS IN TITLE 16, CHAPTERS 10 AND 11, MCA

BY REQUEST OF THE DEPARTMENT OF REVENUE

3/08	INTRODUCED		
3/08	FIRST READING		
3/08	REFERRED TO TAXATION		
3/09	FISCAL NOTE REQUESTED		
3/10	FISCAL NOTE RECEIVED		
3/11	FISCAL NOTE PRINTED		
3/14	HEARING		
3/15	COMMITTEE REPORT—BILL PASSED AS AMENDED		
3/24	2ND READING PASSED	97	1
3/25	3RD READING PASSED	93	3
	TRANSMITTED TO SENATE		
3/27	FIRST READING		
3/27	REFERRED TO TAXATION		
3/30	HEARING		
4/07	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
4/08	2ND READING CONCURRED	48	0
4/10	3RD READING CONCURRED	48	1
	RETURNED TO HOUSE WITH AMENDMENTS		
4/11	2ND READING AMENDMENTS CONCURRED	99	0
4/12	3RD READING AMENDMENTS CONCURRED	97	2
4/18	SIGNED BY SPEAKER		
4/18	SIGNED BY PRESIDENT		
4/18	TRANSMITTED TO GOVERNOR		
5/01	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 578		
	EFFECTIVE DATE: 07/01/95		

HB 588 INTRODUCED BY OHS, ET AL.

CLARIFY PROPERTY TAX REFUND PROVISIONS RELATED TO ERRORS IN THE DESCRIPTION OR LOCATION OF REAL PROPERTY OR IMPROVEMENTS

3/08	INTRODUCED		
3/08	FIRST READING		
3/08	REFERRED TO TAXATION		
3/09	FISCAL NOTE REQUESTED		
3/13	HEARING		
3/14	FISCAL NOTE RECEIVED		
3/14	FISCAL NOTE PRINTED		
3/14	COMMITTEE REPORT—BILL PASSED AS AMENDED		
3/24	2ND READING PASSED	97	2
3/25	3RD READING PASSED	95	1
	TRANSMITTED TO SENATE		
3/27	FIRST READING		
3/27	REFERRED TO TAXATION		
3/30	HEARING		
3/30	COMMITTEE REPORT—BILL CONCURRED		

House BILL NO. 587

INTRODUCED BY

BY REQUEST OF THE DEPARTMENT OF REVENUE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING CIGARETTE AND TOBACCO LAWS IN TITLE 16, CHAPTERS 10 AND 11, MCA; CLARIFYING PROVISIONS RELATING TO THE MONTANA CIGARETTE SALES ACT, THE CIGARETTE SALES TAX, THE TAX ON TOBACCO PRODUCTS, AND THE YOUTH ACCESS TO TOBACCO PRODUCTS CONTROL ACT; AMENDING SECTIONS 3-10-301, 16-10-102, 16-10-103, 16-10-104, 16-10-201, 16-10-204, 16-10-301, 16-10-303, 16-10-402, 16-10-403, 16-11-102, 16-11-111, 16-11-113, 16-11-114, 16-11-115, 16-11-116, 16-11-117, 16-11-118, 16-11-121, 16-11-131, 16-11-132, 16-11-133, 16-11-143, 16-11-144, 16-11-145, 16-11-148, 16-11-149, 16-11-201, 16-11-202, 16-11-203, 16-11-204, AND 16-11-308, MCA; REPEALING SECTION 16-10-401, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Licensure as both wholesaler and retailer allowed.** This chapter does not prevent a person from being licensed as both a wholesaler and a retailer.

Section 2. Section 3-10-301, MCA, is amended to read:

"**3-10-301. Civil jurisdiction.** (1) Except as provided in ~~subsection (2) and in~~ 3-11-103 and in subsection (2) of this section, the justices' courts have jurisdiction:

(a) in actions arising on contract for the recovery of money only if the sum claimed does not exceed $5,000, exclusive of court costs;

(b) in actions for damages not exceeding $5,000, exclusive of court costs, for taking, detaining, or injuring personal property or for injury to real property when no issue is raised by the verified answer of the defendant involving the title to or possession of the real property;

(c) in actions for damages not exceeding $5,000, exclusive of court costs, for injury to the person, except that, in actions for false imprisonment, libel, slander, criminal conversation, seduction, malicious prosecution, determination of paternity, and abduction, the justice of the peace does not have jurisdiction;

(d) in actions to recover the possession of personal property if the value of the property does not exceed $5,000;

(e) in actions for a fine, penalty, or forfeiture not exceeding $5,000, imposed by a statute or an ordinance of an incorporated city or town when no issue is raised by the answer involving the legality of any tax, impost, assessment, toll, or municipal fine;

(f) in actions upon bonds or undertakings conditioned for the payment of money when the sum claimed does not exceed $5,000, though the penalty may exceed that sum;

(g) to take and enter judgment for the recovery of money on the confession of a defendant when the amount confessed does not exceed $5,000, exclusive of court costs;

(h) to issue temporary restraining orders as provided in 40-4-121(3);

(i) in actions initiated by civil complaints for violations of 16-11-305(1).

(2) Justices' courts do not have jurisdiction in civil actions that might result in a judgment against the state for the payment of money."

Section 3. Section 16-10-102, MCA, is amended to read:

"**16-10-102. Declaration of policy.** The advertising, offering for sale, or sale of cigarettes below cost in the retail and wholesale trades ~~with the intent of injuring competitors or lessening competition~~ is an unfair and deceptive business practice. It is the policy of the state to promote the public welfare, and it is the purpose of this chapter to carry out that policy in the public interest, stabilize the sale of cigarettes, and maximize and protect the state revenues from this source."

Section 4. Section 16-10-103, MCA, is amended to read:

"**16-10-103. Definitions.** When used in this chapter, ~~the following words and phrases shall have the meaning ascribed to them in this section,~~ except ~~where~~ when the context clearly indicates a different meaning, the following definitions apply:

(1) ~~"Administrative agency" or "department" shall mean~~ "Department" means the ~~state~~ department of revenue ~~of Montana~~ provided for in 2-15-1301 and, ~~where~~ when the meaning of the context ~~so~~ requires, ~~all deputies and~~ includes its employees ~~duly authorized by such department~~.

~~(2)~~ "Basic cost of cigarettes" ~~shall mean~~ means the ~~invoice~~ list cost of cigarettes ~~to the retailer or wholesaler, as the case may be, or the replacement cost of cigarettes to the retailer or wholesaler, as the~~

~~case may be, in the quantity last purchased, whichever is lower~~ as reported to the department by the manufacturer without any deductions for discounts or taxes of any kind.

~~(3)~~ (2) "Business day" ~~shall mean~~ means any day other than a Sunday or a legal holiday.

~~(4)~~ (3) "Cigarettes" ~~shall mean~~ means any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and whether or not ~~such~~ the tobacco is flavored, adulterated, or mixed with any other ingredient, the wrapper or cover of which is made of nontobacco paper or any other substance or material except tobacco.

~~(5)(a)~~ (4)(a) The term "cost to the retailer" ~~shall mean~~ means the ~~"basic cost of cigarettes" to the retailer~~ cost to the wholesaler from whom the cigarettes were purchased by the retailer plus the "cost of doing business by the retailer" as evidenced by the standards and methods of accounting regularly employed by the retailer in ~~his~~ the retailer's determination of costs for income tax reporting purposes for the total operation of ~~his~~ the retailer's establishment. Cost of doing business by the retailer includes ~~and shall include within said costs~~, without limitation~~,~~:

(i) labor costs (including salaries of executives and officers)~~,~~;

(ii) rent~~,~~;

(iii) depreciation~~,~~;

(iv) selling costs~~,~~;

(v) maintenance of equipment~~,~~;

(vi) delivery costs~~,~~;

(vii) all types of licenses~~,~~;

(viii) all types of business taxes~~,~~;

(ix) all types of insurance~~, and~~;

(x) all types of advertising~~, including~~;

(xi) any rebates, patronage dividends, or concessions, no matter how defined~~, and~~;

(xii) expenses prior to opening for business, including all startup costs, land acquisition costs, construction costs, costs for marketing studies, and similar expenses;

(xiii) any district, central, regional, and national administrative and operation costs and expenses; and

(xiv) ~~any and~~ all other indirect or overhead costs with respect to the operation of the ~~establishment~~ business of the retailer~~,~~.

(b) The cost of doing business by the retailer must be expressed as a percentage and applied to the ~~"basic costs of cigarettes"; provided, however, that any~~ cost to the wholesaler from whom the cigarettes were purchased.

(c) A retailer who purchases directly from ~~the~~ a manufacturer or from any other person at or at less than or about the price normally and usually charged for purchases in wholesale quantities shall, in determining ~~"~~ the cost to the retailer~~"~~ ~~pursuant to this subsection,~~ add the ~~"~~cost of doing business by the wholesaler~~"~~, as determined in subsection ~~(6)(b)~~ (5)(b), to the ~~"~~basic cost of cigarettes~~"~~ to ~~said~~ the retailer, as well as the ~~"~~cost of doing business by the retailer~~"~~.

~~(b)~~(d) In the absence of the filing with the department of satisfactory proof of a lesser or higher cost of doing business by the retailer making the sale, the ~~"~~cost of doing business by the retailer~~"~~ ~~shall be~~ is presumed to be 10% of the ~~"basic cost of cigarettes" to the retailer~~ cost to the wholesaler.

~~(c) In the absence of the filing with the department of satisfactory proof of a lesser or higher cost of doing business, the "cost of doing business by the retailer" who, in connection with the retailer's purchase, received not only the discounts ordinarily allowed upon purchases by a retailer but also, in whole or part, the discounts ordinarily allowed upon purchases by a wholesaler shall be presumed to be 10% of the sum of the "basic cost of cigarettes" and the "cost of doing business by the wholesaler".~~

~~(6) (a)~~ (5)(a) The term "cost to the wholesaler" ~~shall mean~~ means the ~~"~~basic cost of cigarettes~~"~~ ~~to~~ purchased by the wholesaler from a manufacturer plus the ~~"~~cost of doing business by the wholesaler~~"~~ as evidenced by the standards and methods of accounting regularly employed by the wholesaler in ~~his~~ the wholesaler's determination of costs for income tax reporting purposes for the total operation of ~~his establishment and shall include within said costs,~~ the wholesaler's business. The cost of doing business by the wholesaler includes, without limitation~~,~~:

(i) labor costs (including salaries of executives and officers)~~,~~;

(ii) rent~~,~~;

(iii) depreciation~~,~~;

(iv) selling costs~~,~~;

(v) maintenance of equipment~~,~~;

(vi) delivery costs~~,~~;

(vii) all types of licenses~~,~~;

(viii) all types of business taxes~~,~~;

(ix) all types of insurance~~, and~~;

(x) all types of advertising;

(xi) any rebates, patronage dividends, or concessions, no matter how defined;

(xii) expenses prior to opening for business, including all startup costs, land acquisition costs, construction costs, costs for marketing studies, and similar expenses;

(xiii) any district, central, regional, and national administrative and operation costs and expenses; and

(xiv) all other indirect or overhead costs with respect to the operation of the wholesaler.

(b) The cost of doing business by a wholesaler ~~shall also include any rebates, patronage dividends, or concessions, no matter how defined, and any and all other indirect or overhead costs with respect to the operation of the establishment of the wholesaler,~~ must be expressed as a percentage and applied to the "basic cost of cigarettes".

~~(b)~~(c) In the absence of the filing with the department of proof ~~which~~ that the department declares to be satisfactory of a lesser or higher cost of doing business by the wholesaler making the sale, the "cost of doing business by the wholesaler" ~~shall be~~ is presumed to be 5% of the "basic cost of cigarettes" to the wholesaler plus cartage to the retail outlet if performed or paid for by the wholesaler~~, which~~. The cartage cost, in the absence of the filing with the department of satisfactory proof of a lesser or higher cost, ~~shall be~~ is considered to be 3/4 of 1% of the "basic cost of cigarettes" to the wholesaler.

(6) "Department" means the department of revenue provided for in 2-15-1301 and, when the meaning of the context requires, includes its employees.

(7) "Manufacturer" means any person who fabricates cigarettes from raw materials for the purpose of resale.

~~(7)~~(8) "Person" ~~shall mean~~ means ~~and include any~~ an individual, firm, association, company, partnership, corporation, ~~for profit or nonprofit corporation, joint stock company, club, agency, syndicate, cooperative, municipal corporation or other political subdivision of this state, trust, receiver, trustee, fiduciary, and conservator~~ or other business entity, however formed.

~~(8)~~(9) "Retailer" ~~shall mean~~ means ~~and include any~~ a person who operates a store, stand, booth, ~~or~~ concession, or other outlet for the purpose of ~~making sales of~~ selling cigarettes at retail.

~~(9)~~(10) "Sale" ~~shall mean~~ or "sell" means any transfer of cigarettes for ~~a~~ consideration, exchange, barter, gift, offer for sale, ~~and~~ or distribution, in any manner or by any means ~~whatever~~.

~~(10)~~(11) "Sell at retail", "sale at retail", ~~and~~ or "retail sales" ~~shall mean and include~~ means any transfer of title to cigarettes for a valuable consideration, made in the ordinary course of trade or usual conduct of the ~~seller's~~ retailer's business, to the purchaser for consumption or use.

~~(11)~~(12) "Sell at wholesale", "sale at wholesale", ~~and~~ or "wholesale sales" ~~shall mean~~ means and ~~include~~ includes any bona fide transfer of title to cigarettes for a valuable consideration, made in the ordinary course of trade or in the usual conduct of the wholesaler's business, to a retailer for the purpose of resale.

(13) "Sole distributor" means a person who either causes a unique brand of cigarettes to be manufactured according to distinctive specifications and acts as the exclusive distributor of the cigarettes or is the exclusive distributor of a brand of cigarettes within the continental United States.

~~(12)~~(14) "Wholesaler" ~~shall include any~~ means a person who services retail outlets by maintaining an established place of business for the purchase of cigarettes and who:

~~(i)~~(a) purchases cigarettes ~~directly~~ from ~~the~~ a manufacturer for the purpose of selling cigarettes to retailers; or

~~(ii)~~(b) purchases cigarettes from ~~any other person who purchases from the manufacturer and who acquires such cigarettes solely~~ a sole distributor, another wholesaler, or any other person for the purpose of ~~bona fide resale to retail dealers~~ selling cigarettes to retailers; ~~or~~

~~(iii) services retail outlets by the maintenance of an established place of business for the purchase of cigarettes, including but not limited to the maintenance of warehousing facilities for the storage and distribution of cigarettes~~.

~~(b) Nothing contained herein shall prevent a person from qualifying in different capacities as both "wholesaler" and "retailer" under the applicable provisions of this chapter.~~"

Section 5. Section 16-10-104, MCA, is amended to read:

"**16-10-104. Powers of department.** (1) In addition to the penalties and rights imposed and set forth in ~~16-10-401 and~~ 16-10-402, the department shall enforce the provisions of this chapter.

(2) The department ~~shall have~~ has the power to adopt, amend, and repeal rules necessary to enforce and administer the provisions of this chapter."

Section 6. Section 16-10-201, MCA, is amended to read:

"16-10-201. **Wholesaler-to-wholesaler sales.** When one wholesaler sells cigarettes to any other wholesaler, the former ~~shall~~ may not be required to include in ~~his~~ the selling price to the latter the "cost to the wholesaler", as provided by 16-10-103, except that no such sale ~~shall~~ may be made at a price less than the "basic cost of cigarettes", as defined in 16-10-103, but the latter wholesaler, upon resale to a retailer, ~~shall be~~ is considered to be the wholesaler governed by the provisions of 16-10-103~~(6)~~(5)."

Section 7. Section 16-10-204, MCA, is amended to read:

"16-10-204. **Determining cost -- ~~fictitious~~ prices below cost -- free merchandise.** (1) In determining the "cost to the retailer" and the "cost to the wholesaler", the department or a court shall receive and consider ~~as bearing on the bona fides of such cost~~ evidence tending to show that any person ~~complained against under any of the~~ accused of violating the provisions of this chapter purchased cigarettes, with respect to the sale of which complaint is made, ~~at a fictitious price~~ below either the cost to the retailer or the cost to the wholesaler, depending upon the status of the person accused, or upon terms or in ~~such~~ a manner or under ~~such~~ invoices ~~as to~~ that conceal the true cost, discounts, or terms of purchase. ~~and~~ Further, the department or a court shall ~~also~~ receive and consider ~~as bearing on the bona fides of such~~ the cost evidence of the normal, customary, and prevailing terms and discounts in connection with other sales of a similar nature in ~~the trade area or~~ this state.

(2) Merchandise given gratis or payment made to a retailer or wholesaler by the manufacturer ~~thereof~~ of the merchandise for display, advertising, promotion purposes, any type of discount, or otherwise ~~shall~~ may not be considered in determining the cost of cigarettes to the retailer or wholesaler."

Section 8. Section 16-10-301, MCA, is amended to read:

"16-10-301. **Sales below cost ~~-- evidence of unlawful intent~~.** ~~(1)~~ It ~~shall be~~ is unlawful and a violation of this chapter:

~~(a)~~(1) for any retailer or wholesaler ~~with intent to injure a competitor or substantially lessen competition~~ to:

~~(i)~~(a) advertise, offer to sell, or sell, at retail or wholesale, cigarettes at less than cost to ~~such~~ a retailer or wholesaler~~, as the case may be~~;

~~(ii)~~(b) offer a rebate in price, give a rebate in price, offer a concession of any kind, or give a concession of any kind ~~or nature whatever~~ in connection with the sale of cigarettes ~~which~~ that are sold by

~~said~~ the wholesaler or retailer in the ordinary course of ~~his~~ trade or business if ~~such~~ the rebate or concession offered or given in connection with the sale of cigarettes is not offered or given by the wholesaler or retailer in the same ratio with respect to all other merchandise to which ~~such~~ the rebate or concession may lawfully be given;

~~(b)~~(2) for any retailer to:

~~(i)~~(a) induce or attempt to induce or procure or attempt to procure the purchase of cigarettes at a price less than the "cost to the wholesaler", as defined in this chapter;

~~(ii)~~(b) induce or attempt to induce or procure or attempt to procure any rebate or concession of any kind or nature whatever in connection with the purchase of cigarettes.

~~(2) Evidence of advertisement, offer to sell, or sale of cigarettes by any retailer or wholesaler at less than cost to him or evidence of any offer of a rebate in price or the giving of a rebate in price or an offer of a concession or the giving of a concession of any kind or nature whatever in connection with the sale of cigarettes which are sold by said wholesaler or retailer in the ordinary course of his trade or business, if such rebate or concession offered or given in connection with the sale of cigarettes is not offered or given by the wholesaler or retailer in the same ratio with respect to all other merchandise to which such rebate or concession may lawfully be given, or the inducing or attempt to induce or the procuring or the attempt to procure the purchase of cigarettes at a price less than cost to the wholesaler or the retailer shall be prima facie evidence of intent to injure competitors or substantially lessen competition.~~"

Section 9. Section 16-10-303, MCA, is amended to read:

"**16-10-303. Cost survey as evidence.** ~~Where~~ When a cost survey pursuant to cost accounting practices~~, including those defined in 16-10-103(6)(a),~~ used for income tax reporting purposes has been made by the department, ~~or by~~ a trade association, ~~or other~~ an industry group, a wholesaler, or a retailer ~~for the trading area in which the offense is committed~~ to establish either the lowest "cost to the retailer" ~~and~~ or the lowest "cost to the wholesaler", ~~said~~ or both, for the state, the cost survey ~~shall be considered to be~~ is competent evidence for use in proving the cost to the person complained against within the provisions of this chapter."

Section 10. Section 16-10-402, MCA, is amended to read:

"**16-10-402. Injunctive and other civil relief.** (1) In addition to ~~penalties~~ the penalty provided by ~~16-10-401~~ 16-10-403, any person injured or any trade association that represents a person injured by any violation of this chapter ~~or any trade association which is representative of such a person~~ may maintain an action in any court of equitable jurisdiction to prevent, restrain, or enjoin ~~such~~ the violation. If in ~~such~~ the action a violation of this chapter ~~shall be~~ is established, the court shall enjoin and restrain or otherwise prohibit ~~such~~ the violation and, in addition ~~thereto~~, shall assess in favor of the plaintiff and against the defendant the costs of the suit and reasonable ~~attorney's fee~~ attorney fees. In ~~such~~ the action, it ~~shall~~ is not ~~be~~ necessary that actual damages to the plaintiff be alleged or proved, but ~~where~~ when alleged and proved, the plaintiff in ~~said~~ the action, in addition to ~~such~~ injunctive relief and fees and costs of suit, ~~shall be~~ is entitled to recover from the defendant the amount of actual damages sustained by the plaintiff.

(2) ~~In the event no~~ If injunctive relief is not sought or required, any person injured by a violation of this chapter may maintain an action for damages alone in any court of competent jurisdiction. The measure of damages in ~~such~~ the action ~~shall be~~ is the same as prescribed in subsection (1) of this section."

Section 11. Section 16-10-403, MCA, is amended to read:

"**16-10-403. Revocation or suspension of license ~~or permit~~ -- civil penalty.** (1) The department ~~is given full power and authority to~~ may revoke ~~or~~ suspend the license of, ~~or permit of~~ impose a civil penalty not to exceed $500 on, or order any combination of revocation, suspension, and penalty to be imposed on any ~~wholesale or retail cigarette dealer in the state of Montana~~ licensed wholesaler or retailer upon sufficient cause appearing of the violation of this chapter or upon the failure of ~~such~~ the licensee ~~or permittee~~ to comply with any of the provisions of this chapter.

(2) ~~No~~ A license ~~or licenses shall~~ may not be suspended or revoked except upon notice to the licensee and after a hearing prescribed by ~~said~~ the department at its principal office. The department, upon a finding by it that the licensee has failed to comply with any provisions of this chapter or any rule promulgated ~~thereunder~~ under this chapter, shall, in the case of ~~the~~ a first offender, suspend the license ~~or licenses~~ of the ~~said~~ the licensee for a period of not less than 5 or more than 20 consecutive business days ~~and~~, ~~in~~ impose a civil penalty in an amount not to exceed $500, or order both the suspension and the penalty. In the case of a second or plural offender, the department shall suspend ~~said~~ the license ~~or licenses~~ for a period of not less than 20 consecutive business days or more than 12 months, ~~and in~~ impose a civil penalty in an amount not to exceed $500, or order both the suspension and the penalty. In the event

the department finds the offender has been guilty of willful and persistent violations, it may revoke ~~such~~ the licensee's license ~~or licenses~~ and, in its discretion, may impose a civil penalty in an amount not to exceed $500.

(3) Any person whose license ~~or licenses have~~ has been ~~so~~ revoked may apply to the department at the expiration of 1 year for a reinstatement of ~~his~~ the license ~~or licenses~~. ~~Such~~ The license ~~or licenses~~ may be reinstated by the department if it ~~shall appear~~ appears to the satisfaction of ~~said~~ the department that the licensee will comply with the provisions of this chapter and the rules promulgated ~~thereunder~~ under this chapter.

(4) ~~No~~ A person whose license has been suspended or revoked ~~shall~~ may not sell cigarettes or permit cigarettes to be sold during the period of ~~such~~ the suspension or revocation on the premises occupied by ~~him~~ the person or upon other premises controlled by ~~him~~ the person or others or in any other manner or form whatever. ~~Nor shall any~~ A disciplinary proceedings or action ~~be~~ is not barred or abated by the expiration, transfer, surrender, continuance, renewal, or extension of any license issued under the provisions of the "cigarette tax law", as provided in [articles of chapter 11 of the Revised Codes of Montana, 1947].

(5) Any determination by the department and any order of suspension or revocation of a license ~~or licenses thereunder~~ or refusal to reinstate a license ~~or licensee~~ after revocation ~~shall be~~ is reviewable by the court in a proper case and in proceedings as provided by the procedural law of this jurisdiction."

Section 12. Section 16-11-102, MCA, is amended to read:

"**16-11-102. Definitions.** (1) As used in this chapter, the following definitions apply, unless the context requires otherwise:

(a) "Cigarettes" means any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and whether or not the tobacco is flavored, adulterated, or mixed with any other ingredient, the wrapper or cover of which is made of nontobacco paper or any other substance or material except tobacco.

(b) "Department" means the department of revenue provided for in 2-15-1301.

(c) "Person" means an individual, firm, ~~fiduciary,~~ partnership, corporation, ~~trust, organization, or~~ association, company, or other business entity, however formed.

(2) As used in this part, the following definitions apply, unless the context requires otherwise:

(a) "Cigarette vendor" means a person doing business in the state who purchases cigarettes

through a wholesaler, subjobber, or retailer for 10 or more cigarette vending machines that ~~he~~ the person operates for a profit in premises or locations other than ~~his~~ the person's own. That person must be treated as a wholesaler. A person who operates fewer than 10 cigarette vending machines must be treated as a retailer.

(b) "Full face value of insignia" means the total amount of the tax levied under this part.

(c) "Insignia" or "indicia" means the impression, mark, or stamp approved by the department under the provisions of this part.

(d) "Licensed retailer" means any person, other than a wholesaler, subjobber, or cigarette vendor, who is licensed under the provisions of this part.

(e) "Licensed subjobber" means a subjobber licensed under the provisions of this part~~;~~. The person ~~he~~ must be treated as a wholesaler.

(f) "Licensed wholesaler" means a wholesaler licensed under the provisions of this part.

(g) "Manufacturer" means any person who fabricates cigarettes from raw materials for the purpose of resale.

~~(g)~~(h) "Public warehouses" means agents or representatives of manufacturers who receive cigarettes in carload lots for distribution in original cases to wholesalers and retailers.

~~(h)~~(i) "Record" means an original document, a legible facsimile, or an electronically preserved copy.

~~(i)~~(j) "Retailer" means a person~~, other than a wholesaler, subjobber, or cigarette vendor, who is engaged in the business~~ who operates a store, stand, booth, concession, or other outlet for the purpose of selling cigarettes at retail.

~~(j)~~(k) "Sale" ~~and~~ or "sell" ~~mean~~ means any transfer of cigarettes ~~by sale, as defined by 30-2-106, or by gift, barter, or exchange~~ for consideration, exchange, barter, gift, offer for sale, or distribution in any manner or by any means.

(l) "Sole distributor" means a person who either causes a unique brand of cigarettes to be manufactured according to distinctive specifications and acts as the exclusive distributor of the cigarettes or is the exclusive distributor of a brand of cigarettes within the continental United States.

~~(k)~~(m) "Subjobber" means a person who purchases from a licensed wholesaler cigarettes with the Montana cigarette tax insignia affixed and sells or offers to sell the cigarettes to a licensed retailer or cigarette vendor. An isolated sale or exchange of cigarettes between licensed retailers does not constitute those retailers as subjobbers. A licensed subjobber shall use the license in the interest of the general public.

If during any month more than 35% of the volume of cigarette sales by a subjobber is with any retail client whose business is controlled directly or indirectly through consanguinity or affinity with the owner or employer for that retail business, the license is considered to have been used or to be intended to be used in violation of this part.

~~(l)~~(n) "Wholesaler" means ~~any~~ a person who services retail outlets by maintaining an established place of business for the purchase of cigarettes and who: ~~resident in this state who brings or causes to be brought into this state unstamped cigarettes purchased directly from their manufacturers and stores, sells, or otherwise disposes of the cigarettes after they reach this state. The term includes a person who, within this state, manufactures or produces cigarettes, directly or indirectly, and sells or distributes the cigarettes within this state.~~

(i) purchases cigarettes from a manufacturer for the purpose of selling cigarettes to retailers; or

(ii) purchases cigarettes from a sole distributor, another wholesaler, or any other person for the purpose of selling cigarettes to retailers."

Section 13. Section 16-11-111, MCA, is amended to read:

"16-11-111. Cigarette sales tax -- exemption for sale to tribal member. (1) A tax on the purchase of cigarettes for consumption, use, or any purpose other than resale in the regular course of business is imposed and must be precollected by the wholesaler and paid to the state of Montana. The tax is 18 cents on each package containing 20 cigarettes and, when packages contain more or less than 20 cigarettes, a tax on each cigarette equal to 1/20th the tax on a package containing 20 cigarettes.

(2) The tax imposed in subsection (1) does not apply to ~~a cigarette sale if the sale is made:~~

~~(a) by a retailer whose establishment is located within the boundaries of an Indian reservation located in Montana; and~~

~~(b) to an enrolled member of the federally recognized Indian tribe residing on the Indian reservation where the retail establishment is located~~ quota cigarettes.

(3) Subject to the refund or credit provided in subsection (4), the tax must be precollected on all cigarettes entering a Montana Indian reservation.

(4) Pursuant to the procedure provided in subsection (5), a wholesaler making a sale of cigarettes to a retailer within the boundaries of a Montana Indian reservation may apply to the department for a refund or credit for taxes precollected on cigarettes sold by the retailer to a member of the federally recognized

Indian tribe or tribes on whose reservation the sale is made. A wholesaler who does not file a claim within 1 year of the shipment date forfeits the refund or credit.

(5) The distribution of tax-free cigarettes to a tribal member must be implemented through a system of preapproved wholesaler shipments. A licensed Montana wholesaler shall contact the department for approval prior to the shipment of the untaxed cigarettes. The department may authorize sales based on whether the quota, as established in a cooperative agreement between the department and an Indian tribe or as set out in this chapter, has been met. If authorized as a tax-exempt sale, the wholesaler, upon providing proof of order and delivery to a retailer within the boundaries of a Montana Indian reservation selling cigarettes to members of a federally recognized tribe or tribes of that reservation, must be given a credit or refund. Once the quota has been filled, the department shall immediately notify all affected wholesalers that further sales on that reservation must be taxed and that a claim for a refund or credit will not be honored for the remainder of the quota period. Quota allocations are not transferable between quota periods or between reservations.

(6) The total amount of refunds or credits allowed by the department to all wholesalers claiming the refund or credit under subsection (4) for any month may not exceed an amount that is equal to the tax due on the quota allocation. The department shall determine the amount of refunds or credits for each Indian reservation at the beginning of each fiscal year, using the most recent census data available from the bureau of Indian affairs or as provided in a cooperative agreement with the tribe or tribes of the Indian reservation."

Section 14. Section 16-11-113, MCA, is amended to read:

"**16-11-113. Tax insignia.** (1) Except as provided in this section, the ~~distributor or dealer~~ wholesaler of any cigarettes shall cause to be securely affixed to the cigarettes the required insignia denoting the applicable tax. ~~A person specifically exempted under the provisions of 16-11-132(2) is not considered to be acting unlawfully under this section.~~

(2) The insignia must be properly applied prior to sale, under regulations that the department may prescribe.

(3) ~~Wholesalers and retailers~~ Retailers licensed under this part may buy, sell, or have in their possession only cigarettes that have on each package the insignia provided for in this part. The insignia provided for in this part may be sold only to and must be affixed only by licensed wholesalers ~~and licensed~~

~~retailers~~.

(4) If any cigarettes without the insignia affixed are found in the place of business of any unlicensed wholesaler, retailer, or other person, the presumption is that the cigarettes are kept in that place of business in violation of the provisions of this part.

(5) ~~Except as provided in 16-11-132(2), the insignia provided for in this part must be affixed before the sale of the cigarettes by a wholesaler~~ This section does not apply to a wholesaler who has cigarettes in possession that are either to be shipped or consigned to an Indian tribe that has entered into a cooperative agreement with the state or to a military reservation."

Section 15. Section 16-11-114, MCA, is amended to read:

"**16-11-114. Insignia discount.** ~~Every~~ Each licensed wholesaler ~~and licensed retailer shall be~~ is entitled to purchase ~~said~~ an insignia at full face value less the following percentage of the face value upon payment ~~therefor~~ for the insignia as defrayment of the costs of affixing insignia and precollecting ~~such~~ the tax on behalf of the state of Montana:

(1) 6% for the first 2,580 cartons or portion thereof purchased in any calendar month;

(2) 4% for the next 2,580 cartons or portion thereof purchased in any calendar month; and

(3) 3% for purchases in excess of 5,160 cartons in any calendar month."

Section 16. Section 16-11-115, MCA, is amended to read:

"**16-11-115. Tax meter machine -- tax stamp-applying machine -- purchase of stamps.** (1) The department may authorize any wholesaler ~~or retailer~~ of cigarettes licensed under this part to use a tax meter machine to imprint an insignia upon each package of cigarettes imported, sold, or delivered in this state. The insignia must be one approved by the department. Each package of cigarettes imported into or delivered or sold in this state must be marked with the proper insignia of the tax-stamping meter, and ~~thereafter~~ any original package of cigarettes so marked may be lawfully possessed and sold within the state by any wholesaler ~~or retailer~~ licensed under this part. The department shall supervise and check the operation of the tax meter machines. Before using the machine, the operator of the machine shall take the machine's meter to the county treasurer of the county in which the machine is operated. The county treasurer shall set the meter for the number of packages specified and required by the operator. Prior to setting the meter, the county treasurer shall charge the operator the amount of money proper for the

setting, less the expense defrayment provided for in 16-11-114. The county treasurer shall collect this amount in advance unless the department has allowed the purchaser credit as provided in 16-11-117. The county treasurer shall report to the department on forms prescribed by it the name of the licensed wholesaler ~~or licensed retailer~~ and the number of packages for which the meter was set and shall forward to the department any amounts collected from the licensee.

(2) (a) The department may authorize a licensed wholesaler ~~or licensed retailer~~ to affix tax stamps to packages of cigarettes with a heat-applied machine approved by the department. The department shall supervise and check the operation of the stamp-applying machine.

(b) Tax stamps applied as provided in this subsection must be purchased from the department, and payment for the stamps must accompany the order unless the department has allowed the purchaser to delay payment as provided in 16-11-117."

Section 17. Section 16-11-116, MCA, is amended to read:

"**16-11-116. Resale of insignia prohibited -- rebate.** A wholesaler ~~or retailer~~ may not resell to any other wholesaler ~~or retailer~~ any insignia purchased ~~by him~~ from the department. A wholesaler ~~or retailer~~ who has on hand any meter settings or tax insignia at the time of discontinuing ~~his~~ the business of selling cigarettes may apply to the department and be paid the face value of the meter settings or tax insignia less the amount of the expense defrayment allowed by 16-11-114."

Section 18. Section 16-11-117, MCA, is amended to read:

"**16-11-117. When payment for insignia due.** The department ~~shall~~ may permit a licensed wholesaler ~~or licensed retailer~~ to pay for the insignia purchased, or affixation of insignia, within 30 days. ~~after the date of purchase and shall require such licensee to~~ To be eligible to defer payment, a wholesaler shall file with the department either a surety bond ~~issued by a surety company approved by the state department of insurance as to solvency and responsibility and authority to transact business in the state~~ or other cash security, as approved by the department, for ~~such~~ the amount ~~as~~ that the department may fix, but not in excess of an amount equal to the maximum insignia purchases incurred for any 30-day period in the previous calendar year~~; provided, however, that any~~. Any newly licensed wholesaler ~~or licensed retailer~~ shall pay on a cash basis for 1 complete calendar year, after which the department may permit ~~him~~ the wholesaler 30 days to pay for the purchase or affixation of insignia and shall require a bond or security

as ~~hereinabove~~ provided in this section."

Section 19. Section 16-11-118, MCA, is amended to read:

"**16-11-118. Records of ~~tax meter users and stampers~~ wholesalers.** All ~~tax meter users and stampers~~ wholesalers shall keep for 5 years all invoices of cigarettes purchased and imported ~~by them~~, all receipts issued ~~by them~~ and insignia purchased, and an accurate record of all sales of cigarettes ~~by the tax meter users or stampers~~, showing the name and address of each purchaser, the date of sale, the quantity of each kind sold, the name of any carrier, the shipping point, and the destination. ~~The tax meter users or stampers~~ A wholesaler shall permit the department and the department of justice and their assistants, authorized agents, or representatives to examine all ~~taxable items of~~ cigarettes, invoices, receipts, books, paper, memoranda, and records as may be necessary to determine compliance with this chapter. ~~whether the tax meter machine or tax stamp applying machine has been used as required or the insignia required by this part had been purchased and used or to determine the amount of the tax as may be due or unpaid.~~"

Section 20. Section 16-11-121, MCA, is amended to read:

"**16-11-121. Vending machines not places of business.** Cigarette vending machines ~~shall~~ may not be considered as places of business per se, but a report of each ~~and all machines~~ machine ~~shall~~ must be made on forms prescribed by the department, ~~which shall state~~ The form must include the name and address of the cigarette vendor, the assigned location of each machine, with best machine identification available, type of business, and ~~such~~ other information ~~as~~ that the department may require for proper administration of this part."

Section 21. Section 16-11-131, MCA, is amended to read:

"**16-11-131. Transporting cigarettes without insignia a misdemeanor -- invoices and delivery tickets required -- stop and inspection authorized.** (1) It is unlawful for a person to transport into, receive, carry, or move from place to place within this state, except in the course of interstate commerce, any cigarettes that do not bear the insignia (stamps) required by this part~~, except for a person specifically exempted in 16-11-132(2)~~.

(2) (a) When transporting unstamped cigarettes, a person shall possess invoices or delivery tickets for the cigarettes that show the name and address of the consignor or seller, the name of the consignee

or purchaser, and the quantity and brands of the cigarettes being transported. ~~If the cigarettes are consigned to or purchased by a person in this state, the consignee or purchaser must be authorized by 16-11-132 to possess unstamped cigarettes in this state.~~

(b) The cigarettes transported are subject to seizure, forfeiture, and sale as provided in 16-11-141, 16-11-147, 16-11-158, and this section if:

(i) there are no invoices or delivery tickets;

(ii) the name or address of the consignee or purchaser is falsified; or

(iii) the consignee or purchaser is not authorized to possess unstamped cigarettes.

(3) Transportation of cigarettes from a point outside the state to a point in another state is not a violation of this section if the person transporting the unstamped cigarettes possesses adequate invoices or delivery tickets that give the name and address of the out-of-state consignor or seller and the out-of-state consignee or purchaser.

(4) If the department, its authorized agent, the department of justice, or a peace officer of the state has knowledge or reasonable grounds to believe that a vehicle is transporting cigarettes in violation of this section, the department, its agent, the department of justice, or a peace officer may stop and inspect the vehicle.

(5) A person violating the provisions of this section is guilty of a misdemeanor."

Section 22. Section 16-11-132, MCA, is amended to read:

"**16-11-132. Unlawful to sell cigarettes without valid license -- exceptions.** (1) ~~No~~ A person ~~shall~~ may not sell, offer to sell, or possess with intent to sell any cigarettes, at wholesale or retail, unless ~~his~~ the person's license is current and valid under the provisions of this part.

(2) ~~No~~ A person ~~shall~~ may not sell, offer to sell, or possess with intent to sell any cigarettes, at wholesale or retail, to a resident or nonresident wholesaler, subjobber, or retailer who is not licensed under this part or who is not licensed by the state in which ~~he~~ the person sells, offers to sell, or intends to sell cigarettes~~, except that~~. However, a ~~resident~~ wholesaler, ~~resident~~ subjobber, or retailer licensed under the provisions of this chapter may sell cigarettes to ~~a resident or nonresident~~ any person, wholesaler, subjobber, or retailer not licensed under this chapter if:

(a) ~~such resident or nonresident~~ the person, wholesaler, subjobber, or retailer is exempt from state cigarette taxation provisions;

(b) ~~such resident or nonresident~~ the person, wholesaler, subjobber, or retailer furnishes documentary evidence ~~that he is exempt~~ of exemption from state cigarette taxation provisions; and

(c) ~~such resident or nonresident~~ the person, wholesaler, subjobber, or retailer signs a receipt of purchase for any cigarettes evidencing ~~that he is exempt~~ an exemption from state cigarette taxation provisions.

(3) ~~Any~~ A person violating the provisions of this section is guilty of a misdemeanor and shall be punished as ~~hereinafter~~ provided in this part, and all cigarettes in ~~his~~ the person's possession ~~shall~~ must be seized and forfeited to the state."

Section 23. Section 16-11-133, MCA, is amended to read:

"**16-11-133. Sale and use of cigarettes without insignia unlawful.** ~~Every~~ A person who sells any package of cigarettes ~~which~~ that does not bear the insignia required by this part and ~~every~~ a person who uses or consumes a cigarette within this state, taken from a package ~~which~~ that does not bear the required insignia, is guilty of a misdemeanor ~~and shall be punished as hereinafter provided, except that a person specifically exempted under the provisions of 16-11-132(2) may not be considered to be acting unlawfully under this section~~."

Section 24. Section 16-11-143, MCA, is amended to read:

"**16-11-143. Penalty for unpaid cigarette tax.** (1) If ~~any~~ a person fails or refuses to pay the tax required by this part when due, the department shall proceed to determine the tax due from ~~such~~ the information ~~as~~ that the department can obtain and shall assess the tax ~~so determined~~ plus a penalty that is the greater of 5% of the tax or $50 against ~~such~~ the person and notify ~~him~~ the person of the amount. ~~After such notice such tax shall become due and payable, together with a penalty of 5% of such tax or $5 per day for each day after the date of such notice, whichever is greater.~~

(2) In the case of any violation of this chapter, the department ~~shall be entitled to~~ may sue, in the district where the department maintains its principal office, for the amount of the unpaid tax, penalty, and costs, including reasonable expense of the department in effecting collection of the unpaid tax and penalty. ~~Where~~ When the court finds that the failure to pay the tax has been willful, the court ~~must~~ shall, in addition, assess damages in treble the amount of the tax found to be due."

Section 25. Section 16-11-144, MCA, is amended to read:

"**16-11-144. Revocation or suspension of license.** (1) The department may revoke or suspend the license of any wholesaler, subjobber, retailer, or cigarette vendor for failure to comply with any provision of this part, ~~or of~~ The Montana Cigarette Sales Act (Title 16, chapter 10) ~~and with any lawful~~, or any rule of the department made pursuant to ~~said~~ those laws.

(2) ~~Any~~ A person aggrieved by ~~such~~ a revocation or suspension may apply to the department for a hearing, which ~~shall~~ must be open to the public. ~~and~~ If the person is aggrieved by the decision of the department, the person may further appeal to the court.

(3) When a license has been ~~duly~~ revoked, ~~no~~ a license ~~shall again issue to such~~ may not be issued to the licensee for a period of 1 year ~~thereafter~~. When a license has been ~~duly~~ suspended, the suspension may be for any period not to exceed 1 year.

(4) ~~Any~~ A person who ~~shall sell~~ sells cigarettes after ~~his~~ the person's license has been revoked or suspended is guilty of a misdemeanor and shall be punished as ~~hereinafter~~ provided in this part, and all cigarettes in ~~his~~ the person's possession ~~shall~~ must be seized and forfeited to the state."

Section 26. Section 16-11-145, MCA, is amended to read:

"**16-11-145. Place where violations committed a public nuisance.** ~~Every~~ Each person having possession or control of or who maintains a building or place where cigarettes are sold in violation of this part or who permits the ~~same to be done~~ cigarettes to be sold in violation of this part in any place or building possessed, controlled, or maintained by ~~him~~ that person is guilty of maintaining and keeping a nuisance~~, and the~~. The building or place so used, together with the personal property and fixtures used in connection therewith, ~~shall be deemed~~ is considered a nuisance. ~~Such~~ The person ~~shall~~ must be enjoined and ~~such~~ the building or place, personal property, and fixtures abated as a nuisance at the instance of the state."

Section 27. Section 16-11-148, MCA, is amended to read:

"**16-11-148. Violation a misdemeanor unless otherwise provided -- penalties.** Unless ~~hereinbefore expressly~~ otherwise provided, the violation of any provision of this part ~~shall constitute~~ constitutes a misdemeanor ~~and any~~. A person violating any ~~such~~ provision of this part shall be punished by a fine of not less than $100 or more than $500 or by imprisonment in the county jail for not less than 30 days or more

than 6 months, or ~~by~~ both. ~~such fine and imprisonment and, if such~~ If the person is the holder of a license issued under this part, ~~such~~ the license ~~shall~~ must be revoked by the department for ~~a period of~~ 1 year."

Section 28. Section 16-11-149, MCA, is amended to read:

"**16-11-149. Hearings before state tax appeal board.** ~~Any~~ A person aggrieved by any action of the department or its authorized agents under the provisions of this part, except for a revocation of a license pursuant to 16-11-144, may apply to the state tax appeal board, in writing, for a hearing or rehearing within 30 days after the action of the department or its authorized agents. The board shall promptly consider the application, set the application for hearing, and notify the applicant of the time and place fixed for the hearing or rehearing, which may be at its office or in the county of the applicant. After the hearing or rehearing, the board may make any further or other order in the premises as it may consider proper and lawful and shall furnish a copy to the applicant. The department, on its own initiative, may order a contested case hearing on any matter concerned with licensing, as defined in 2-4-102, in connection with the administration of this part upon at least 10 days' notice in writing to the person or persons to be investigated."

Section 29. Section 16-11-201, MCA, is amended to read:

"**16-11-201. Definitions.** As used in this part, the following definitions ~~shall~~ apply, unless the context requires otherwise:

(1) ~~The word "retailer"~~ "Retailer" ~~shall mean~~ means any person other than a wholesaler who is engaged in the business of selling tobacco products to the ultimate consumer.

(2) ~~The words "sale"~~ "Sale" or "sell" ~~shall mean and include~~ means any transfer of tobacco products for a consideration, exchange, barter, gift, offer for sale, ~~and~~ or distribution, in any manner or by any means ~~whatever, of tobacco products other than cigarettes~~.

(3) "Tobacco product" means a substance other than cigarettes that is intended for human consumption and that contains tobacco.

~~(3)~~(4) ~~The words "wholesale price" shall mean~~ "Wholesale price" means the established price for which a manufacturer sells a tobacco product ~~other than cigarettes~~ to a wholesaler or ~~unclassified acquirer~~ any other person before any discount or other reduction.

~~(4)~~ (5) ~~The word "wholesaler" shall mean~~ "Wholesaler" means any person who purchases tobacco

products ~~other than cigarettes~~ directly from the manufacturer or ~~who purchases tobacco products other than cigarettes~~ from any other person who purchases from the manufacturer and who acquires ~~such~~ the products for ~~the purpose of bona fide sales~~ sale to retail dealers ~~or who services retail outlets by the maintenance of an established place of business for the purchase of tobacco products other than cigarettes, including but not limited to the maintenance of warehousing facilities for the storage and distribution of tobacco products~~."

Section 30. Section 16-11-202, MCA, is amended to read:

"**16-11-202. Tax on sale of tobacco other than cigarettes -- imposed on retail consumer -- rate of tax.** (1) All taxes paid pursuant to the provisions of this section ~~shall be exclusively presumed~~ are considered to be direct taxes on the retail consumer, precollected for the purpose of convenience and facility only. When the tax is paid by any other person, ~~such~~ the payment ~~shall be~~ is considered as an advance payment and ~~shall~~ must be added to the price of tobacco products ~~other than cigarettes~~ and recovered from the ultimate consumer or user. Any person selling tobacco products ~~other than cigarettes~~ at retail shall state or separately display in the premises where ~~such~~ the products are sold a notice of the tax included in the selling price and charged or payable pursuant to this section. The provisions of this section ~~shall in no way~~ do not affect the method of collection of ~~such~~ the tax as ~~hereinafter~~ provided in this part.

(2) There ~~is hereby levied, imposed, and assessed upon tobacco products other than cigarettes sold or possessed in this state and there shall~~ must be collected and paid to the state of Montana a tax of 12 1/2% of the wholesale price of ~~such~~ all tobacco products to the wholesaler~~, excepting therefrom such products as may be~~. Tobacco products shipped from Montana and destined for retail sale and consumption outside the state ~~of Montana~~ are not subject to this tax."

Section 31. Section 16-11-203, MCA, is amended to read:

"**16-11-203. Wholesaler to precollect tax.** The tax imposed ~~shall~~ must be precollected and paid by the wholesaler to the department prior to the sale of tobacco products ~~other than cigarettes to the purchaser from the wholesaler~~."

Section 32. Section 16-11-204, MCA, is amended to read:

"**16-11-204. Wholesaler's sale without tax prepayment a misdemeanor -- penalty.** ~~Any~~ A wholesaler who ~~shall sell~~ sells any tobacco products ~~other than cigarettes~~ without first making payment of the tax provided for by this part ~~in the manner and~~ or at the time specified shall be guilty of a misdemeanor and ~~further shall~~ must be enjoined by an action pursued in the district court of ~~the county of~~ Lewis and Clark County, Montana, from making further sale of tobacco products ~~other than cigarettes~~ for a period not less than 1 month or more than 1 year."

Section 33. Section 16-11-308, MCA, is amended to read:

"**16-11-308. Penalties.** (1) Failure to obtain a license as required by 16-11-303 or to post signs as provided in 16-11-304 is punishable by a civil penalty of $100.

(2) A person who violates 16-11-305(1) ~~may be punished by~~ is subject to a civil penalty of $100. A subsequent violation within 1 year ~~is punishable by~~ subjects the person to a civil penalty of $200. A third violation ~~is punishable by~~ subjects the person to a civil penalty of $300 if two violations occurred within the 2-year period prior to that violation. A fourth violation ~~is punishable by~~ subjects the person to a civil penalty of $500 if three or more violations occurred within the 2-year period prior to that violation.

(3) A person who violates 16-11-307 is guilty of a misdemeanor and upon conviction ~~is liable for a civil penalty of~~ may be fined not more than $100 for the first violation. A subsequent violation is punishable by a ~~civil penalty~~ fine of not more than $200. A third or subsequent violation is punishable by a ~~civil penalty~~ fine of not more than $500.

(4) A license holder is not subject to a civil penalty under subsection (2) for a violation by ~~his~~ the license holder's employee or agent if the sale was without the knowledge of the license holder and the license holder shows that the license holder had in place a system to prevent violations of 16-11-305(1).

(5) A justice's court has civil jurisdiction over a civil complaint regarding a violation of 16-11-303, 16-11-304, or 16-11-305(1) and may impose the penalty prescribed in subsection (2) upon a finding by a preponderance of the evidence that the violation occurred. The county attorney of the county in which a civil penalty is imposed under subsection (2) shall inform the department of revenue of the imposition of the penalty."

NEW SECTION. **Section 34. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 16, chapters 10 and 11, part 1, and the provisions of Title 16, chapters 10 and 11,

part 1, apply to [section 1].

NEW SECTION. **Section 35. Repealer.** Section 16-10-401, MCA, is repealed.

NEW SECTION. **Section 36. Effective date.** [This act] is effective July 1, 1995.

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0587, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act generally revising cigarette and tobacco laws in Title 16, chapters 10 and 11, MCA; clarifying provisions relating to the Montana Cigarette Sales Act, the cigarette sales tax, the tax on tobacco products, and the Youth Access to Tobacco Products Control Act; and providing an effective date.

FISCAL IMPACT:

This bill has no impact on Department of Revenue expenditures or revenues.

Dave Lewis 3-10-95

DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Joe Quilici

JOE QUILICI, PRIMARY SPONSOR DATE
Fiscal Note for HB0587, as introduced

HB 587

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON TAXATION

Call to Order: By **CHAIRMAN CHASE HIBBARD**, on March 14, 1995, at 8:00 A.M.

ROLL CALL

Members Present:

Rep. Chase Hibbard, Chairman (R)
Rep. Marian W. Hanson, Vice Chairman (Majority) (R)
Rep. Robert R. "Bob" Ream, Vice Chairman (Minority) (D)
Rep. Peggy Arnott (R)
Rep. John C. Bohlinger (R)
Rep. Jim Elliott (D)
Rep. Daniel C. Fuchs (R)
Rep. Hal Harper (D)
Rep. Rick Jore (R)
Rep. Judy Murdock (R)
Rep. Thomas E. Nelson (R)
Rep. Scott J. Orr (R)
Rep. Bob Raney (D)
Rep. John "Sam" Rose (R)
Rep. William M. "Bill" Ryan (D)
Rep. Roger Somerville (R)
Rep. Robert R. Story, Jr. (R)
Rep. Emily Swanson (D)
Rep. Jack Wells (R)
Rep. Kenneth Wennemar (D)

Members Excused: None.

Members Absent: None.

Staff Present: Lee Heiman, Legislative Council
Donna Grace, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: HB 587 ✓
SB 328
SB 198
SB 138

Executive Action: SB 328 - Concurred In
HB 587 - Do Pass as Amended
HB 497 - Do Pass as Amended

{Tape: 1; Side: A.}

HEARING ON HB 587

Opening Statement by Sponsor:

REP. JOE QUILICI, House District 36, Butte, said he was bringing HB 587 to the Committee at the request of the Department of Revenue (DOR). The bill is a housekeeping and clarification bill. He asked representatives of the DOR to provide informational testimony.

Informational Testimony:

Bill Kloker, Tax Program Supervisor, DOR, outlined the changes the DOR is requesting in HB 587. A copy of his section by section analysis of the bill is attached. EXHIBIT 1.

Proponents' Testimony:

None.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

REP. ROSE asked if the bill would affect the revenue the State of Montana receives from cigarette taxes. Mr. Kloker said it would not. He said the bill clarifies confusing language in the statute. In addition, issues which were dealt with by Administrative Rule have been added to the statutes at the request of the industry.

REP. ELLIOTT asked why Montana has set a minimum price for cigarettes. **Char Maharg, DOR,** said there has been a lot of discussion about whether the state should be in the business of setting minimum prices. The statute was adopted in 1965 and the intent was to prevent unfair competition, to prohibit sales below cost and stabilize the state's tax collection.

Closing by Sponsor:

REP. QUILICI said HB 587 is a "clean-up" bill and would make administration of the statue easier for the DOR.

HEARING ON SB 328

Opening Statement by Sponsor:

SEN. SUE BARTLETT, Senate District 27, Helena, said SB 328 would clarify that "personal property tax" is actually a "business equipment tax" and the correct term should be used by the DOR on

Discussion:

None.
Vote:

On a voice vote, the motion passed, 19 - 1.

EXECUTIVE ACTION ON HB 587

Motion:

REP. RANEY MOVED THAT HB 587 DO PASS.

Discussion:

Mr. Heiman said there was a technical amendment to the bill which would strike a definition of "Department" which is included in another section of the bill. EXHIBIT 6.

Motion/Vote:

REP. RANEY MOVED THE AMENDMENT BE ADOPTED. On a voice vote, the amendment passed unanimously.

Motion/Vote:

REP. REAM MOVED THAT HB 587 AS AMENDED DO PASS. On a voice vote, the motion passed, 20 - 0.

EXECUTIVE ACTION ON HB 497

REP. BOHLINGER distributed copies of an unofficial gray bill and a description of what the bill would do. EXHIBITS 7 and 8. REP. BOHLINGER said the name of the program would be changed from "Low-Income Property Tax Program" to "Property Tax Assistance Program" because many people do not want to be referred to as "low income." He briefly reviewed the other aspects of the bill outlined in Exhibit 8. REP. BOHLINGER said the DOR furnished additional fiscal information. EXHIBIT 9. He asked the Committee to refer to Option 3 which illustrates how the costs were arrived at.

REP. BOHLINGER said the DOR had proposed technical amendments to the gray bill. EXHIBIT 10. The amendment would change the due date for applications for the low-income property tax to March 15. The amendment also eliminates the requirement that the classification and appraisal notice advise taxpayers of the low-income property tax reduction program.

HOUSE OF REPRESENTATIVES

Taxation

ROLL CALL DATE March 14, 1995

NAME	PRESENT	ABSENT	EXCUSED
Rep. Chase Hibbard, Chairman	✓		
Rep. Marian Hanson, Vice Chairman, Majority	✓		
Rep. Bob Ream, Vice Chairman, Minority	✓		
Rep. Peggy Arnott	✓		
Rep. John Bohlinger	✓		
Rep. Jim Elliott	✓		
Rep. Daniel Fuchs	✓		
Rep. Hal Harper	✓		
Rep. Rick Jore	✓		
Rep. Judy Rice Murdock	✓		
Rep. Tom Nelson	✓		
Rep. Scott Orr	✓		
Rep. Bob Raney	✓		
Rep. Sam Rose	✓		
Rep. Bill Ryan	✓		
Rep. Roger Somerville	✓		
Rep. Robert Story	✓		
Rep. Emily Swanson	✓		
Rep. Jack Wells	✓		
Rep. Ken Wennemar	✓		

HOUSE STANDING COMMITTEE REPORT

March 14, 1995

Mr. Speaker: We, the committee on **Taxation** report that **House Bill 587** (first reading copy -- white) **do pass as amended**.

Signed: _____
Chase Hibbard, Chair

And, that such amendments read:

1. Page 2, lines 26 through 28.
Strike: ""Department" means the"
Strike: "department" on line 27 through "revenue" on line 27
Strike: "provided for in 2-15-1301 and," on line 27
Strike: "when the meaning of the context" on line 27
Strike: "requires," on line 27
Strike: "includes its employees"
Strike: "."

-END-

Committee Vote:
Yes 20, No 0.

591251SC.Hdh

EXHIBIT 1
DATE 3/14/95
HB 587

HOUSE BILL 587

Title 16, Chapters 10 and 11

Cigarette Marketing and Taxation/Licensing and Minor Law

House Bill 587 is a housekeeping and clarification bill addressing the following:

*Simplifying language and format changes suggested by the Department of Revenue and industry and changes made by the Legislative Council

*Clarifying language to reflect current administration and industry practices

*Aligning definitions in both sections where appropriate to eliminate confusion

*Aligning current law with recent litigation--eliminating the wholesaler residency requirement

*Repealing 16-10-401 and proposing a new section to replace the criminal penalty with a civil penalty for violations of minimum price

*Clarifying the penalty language related to the Minor Law (16-11-308)

SECTION BY SECTION ANALYSIS

SECTION 1

Stores like Price/Costco and Sam's Club operate as both a wholesale and retail outlet. The change clarifies that stores may operate as both a licensed wholesaler and a licensed retailer. Removed language found in a definition statute (16-10-103(12(b) and provided a new section applicable to both chapters.

SECTION 2

The 1993 Legislature passed the Youth Access to Tobacco Products Control Act - The Minor Law. This change will clarify that violations of the Act are subject to civil penalties and are handled in justice court.

SECTION 3

Selling cigarettes below the state minimum price is a violation of the minimum price law. The reason a person sold cigarettes below the state minimum price is not the violation, the violation is that he/she sold the cigarettes below the state minimum price. The requirement to prove intent makes the statute impossible to enforce.

SECTION 4 - Definitions

(1)(4)AND (5)

The department is responsible for setting and enforcing the minimum price of cigarettes. The proposed changes will clear up the language necessary to set one minimum price for each kind of cigarette sold in Montana and will clarify the accounting practices used for a "cost showing" to change the statutory presumption of the cost of doing business(wholesaler 5% retailer 10%). The department has historically set the minimum price using the manufacturers base cost of cigarettes. Montana does not allow any discounts off the manufacturer's invoice. Other states allow discounts off the manufacturers invoice. Montana has no control over the invoice price paid by out-of-state wholesalers. Therefore, out-of-state wholesalers could show that their invoice cost or replacement cost is lower than the price used by Montana in setting the minimum price. Replacement or invoice cost could be higher or lower than the minimum price set by the department depending on if there is an increase or decrease to the manufacturers basic cost.

In setting the minimum price we begin with the base cost of cigarettes then add the statutory presumed cost of doing business by the wholesaler (5%), cartage (.75%) and the statutory presumed cost of doing business by the retailer (10%). Any wholesaler or retailer can request a "cost showing" before the department to prove that they can do business lower than the presumed cost of doing business. If they prove their cost is less than the presumed cost, the department would change the minimum price to the lower cost. This would be the new state minimum price of cigarettes.

(6)

Changes the wording, not the meaning, by cleaning up sentence structure to make law more readable.

(7)

The term manufacturer is used in both chapters and was never defined. The term should be defined.

(8),(9),(10)AND (14)

Each chapter has it's own definitions. The proposed changes would make the definitions the same in both chapters.

(11)

Changes the wording, not the meaning, by cleaning up sentence structure to make the law more readable.

EXHIBIT 1
3-14-95
HB 587

(13)

This change is necessary because the industry has changed the way it does business over the years. A distributor may approach a manufacturer and request the manufacturer to make a special cigarette for the distributor. The distributor is the only one that can sell the special cigarettes to licensed wholesalers in Montana.

SECTION 5

This change is necessary because we propose to repeal 16-10-401.

SECTIONS 6 & 7

Change the wording, not the meaning, by cleaning up sentence structure to make the law more readable.

SECTION 8

Selling cigarettes below the statutory minimum is a minimum price violation . The reason why a person sold cigarettes below the statutory minimum is not a violation, the violation is that he/she sold the cigarettes below the statutory minimum.

SECTION 9

The proposed changes will clear up the language and will clarify the accounting practices used for a "cost survey".

SECTIONS 10

This change is necessary because we propose to repeal 16-10-401.

SECTIONS 11

We propose to repeal 16-10-401. Section 16-10-401 addresses the penalty for selling below the statutory minimum as a misdemeanor. This means that we need to treat the person as a criminal because it was a misdemeanor. By repealing 16-10-401, if someone is selling below the statutory minimum we can penalize them by imposing a civil penalty or revoke/suspend their cigarette license. Sometimes it is just a mistake with no intention of violating the statute. We moved the penalty of not more than $500 from section 16-10-401 to this section. We also change the wording, not the meaning, by cleaning up sentence structure to make sentences more readable and deleting words that do not apply.

SECTION 12 - Definitions

(1) (c); (2)(g)(j),(k)(l) AND (n)

Each chapter has it's own definitions. The proposed changes would make the definitions the same in both chapters.

(2)(n)

The proposed change to the definition of wholesaler is necessary because of a stipulated judgement handed down by the court. McLean Western, INC., McLean Company, INC and Coremark INC. versus Montana Department of Revenue. These companies wanted to stamp Montana cigarettes at their out of state warehouse but the department would not license them as a Montana wholesaler . By the definition of wholesaler (16-11-102(l) they must be a resident in this state. They prevailed in court showing that we were causing them financial harm and hardship by not licensing them as a wholesaler. The stipulated judgement required us to license them as a wholesaler and let them stamp at their out-of-state warehouse. Therefore, the present statute must be changed to conform to the court decision by eliminating the residency requirement for stamping cigarettes. Today we have 8 out-of-state wholesalers.

SECTIONS 13 and 14

The 1993 Legislature changed the cigarette statutes by establishing a reservation quota system for all Montana reservations. Only quota cigarettes are exempt from state taxation. The current wording of this section suggests that all cigarettes shipped to reservations smokshops are exempt. House Bill 283 (1993) also required all cigarettes sold in Montana to be stamped except for sales made on a military reservation or on an Indian reservations that has a cooperative agreement with the state to stamp their quota cigarettes. Therefore it is necessary to delete and change the meaning of these sections.

SECTIONS 15, 16, 17, 18, 19 AND 20

Change the wording, not the meaning, by cleaning up sentence structure to make the law more readable and deleting words that do not apply .

SECTION 21

The 1993 Legislature changed the cigarette statutes by establishing a reservation quota system for all Montana reservations. Only quota cigarettes are exempt from state taxation. The current wording of this section suggests that all cigarettes shipped to reservations smokshops are exempt. House Bill 283 (1993) also required all cigarettes sold in Montana to be stamped except for sales made on a military reservation or on an Indian reservations that have a cooperative agreement with the state to stamp their quota cigarettes.. Therefore it is necessary to delete and change the meaning of this section.

SECTION 22

The proposed change to the definition of Wholesaler (16-11-102(l)) and this Section (16-11-132) are necessary because of a stipulated judgement handed down by the court. McLean Western, INC., McLean Company, INC and Coremark INC. versus Montana Department of Revenue. The department would not license them as a Montana wholesaler because they wanted to stamp Montana cigarettes at their out of state warehouse. By the definition of wholesaler (16-11-102(l) they must be a

resident in this state. They prevailed in court showing that we were causing them financial harm and hardship by not licensing them as a wholesaler. The stipulated judgement required us to license them as a wholesaler and let them stamp at their out-of-state warehouse. Therefore, the present statute must be changed to conform to the court decision by eliminating the residency requirement. Today we have 8 out-of-state wholesalers.

SECTION 23

The 1993 Legislature changed the cigarette statutes by establishing a reservation quota system for all Montana reservations. House Bill 283 (1993) also required all cigarettes sold in Montana to be stamped except for sales made on a military reservation or on an Indian reservations that have a cooperative agreement with the state to stamp their quota cigarettes.

SECTION 24

The section aligns the penalties for unpaid cigarette tax with the other taxes we administer.

SECTIONS 25, 26, 27

Change the wording, not the meaning, by cleaning up sentence structure to make the law more readable.

SECTION 28

If the department revokes or suspends a license the person is entitled to a hearing before the department. If the person wants to appeal the department's decision they can appeal it to district court. The appeal will not go to the State Tax Appeal Board because this is not a hearing on a tax.

SECTIONS 29

The term tobacco product is the central focus of Chapter 11, Part 2. It is never defined in the definition section. The term should be defined and will eliminate needless wording throughout Part 2.

SECTIONS 30, 31 AND 32

Change the wording, not the meaning, by cleaning up sentence structure to make the law more readable, deleting words that do not apply and deleting phrases used over and over in the same sentence.

SECTION 33

The 1993 Legislature passed the Youth Access to Tobacco Products Control Act - The Minor Law. This change will clarify that violations of the Act are subject to civil penalties and are handled in justice court. Other legislation is also clarifying this

section. Therefore, this section may be need to be coordinated with other legislation.

SECTION 34

Codification

SECTION 35

We propose to repeal section 16-10-401 - Criminal penalty for selling cigarettes below minimum price.

SECTION 36

The effective date of this bill is July 1, 1995

EXHIBIT 1
3-14-95
HB587

STATE OF MONTANA
MINIMUM CIGARETTE COSTS

13-Mar-95
FULL PRICE BRANDS

	85mm's 100mm's 120mm's	
MANUFACTURER'S LIST COST---------	$8.7900	
(No cash, trade or any discounts of any type are allowed)		
FEDERAL TAX PER CARTON----------	$2.4000	
STATE TAX PER CARTON----------	$1.8000	
	$12.9900	
5% PRESUMED COST OF DOING BUSINESS--------	$0.6495	(5% of $12.9900)
.0075 CARTAGE----------	$0.0974	(.0075 of $12.9900)

(Addition of $12.99 + $0.6495 + $0.0974 = $13.7369)

COST TO WHOLESALER----------	$13.74

(10% * $13.74 = $1.38)

10% PRESUMED COST OF DOING BUSINESS-------	$1.38
COST TO RETAILER----------	$15.12
PER PACK----------	$1.52

EXHIBIT 6
DATE 3/14/95
HB 587

Amendments to House Bill No. 587
First Reading Copy

For the Committee on Taxation

Prepared by Lee Heiman
March 13, 1995

Technical Amendment:

1. Page 2, lines 26 through 28.
Strike: ""Department" means the"
Strike: "department" on line 27 through "revenue" on line 27
Strike: "provided for in 2-15-1301 and," on line 27
Strike: "when the meaning of the context" on line 27
Strike: "requires," on line 27
Strike: "includes its employees"
Strike: "."

HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

Taxation COMMITTEE BILL NO. HB 581

DATE 3/14/95 SPONSOR(S) Rep. Zuiliei

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
Chris Maluey	DOR	581		✓
				✓

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

MINUTES

MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON TAXATION

Call to Order: By **CHAIRMAN GERRY DEVLIN**, on March 30, 1995, at 8:00 a.m.

ROLL CALL

Members Present:

Sen. Gerry Devlin, Chairman (R)
Sen. Mike Foster, Vice Chairman (R)
Sen. Mack Cole (R)
Sen. Delwyn Gage (R)
Sen. Lorents Grosfield (R)
Sen. John G. Harp (R)
Sen. Dorothy Eck (D)
Sen. Barry "Spook" Stang (D)
Sen. Fred R. Van Valkenburg (D)

Members Excused: None

Members Absent: None

Staff Present: Jeff Martin, Legislative Council
Renée Podell, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: HB 587, HB 545, HB 562, HB 588
Executive Action: HB 545, HB 588, HB 550, (No Action on HB 562)

HEARING ON HB 587

Opening Statement by Sponsor:

REP. JOE QUILICI, HD 36, Butte, asserted HB 587 is presented at the request of the Department of Revenue. He said it is a clean-up measure simplifying a language and format change made by the Legislative Council.

Proponents' Testimony:

Bill Kloker, Tax Program Supervisor, Department of Revenue, presented a section by section analysis. **EXHIBIT 1.**

Opponents' Testimony:

None

Informational Testimony:

None

Questions From Committee Members and Responses:

CHAIRMAN DEVLIN asked **Mr. Kloker** if he had amendments for the coordination language he mentioned was needed. **Mr. Kloker** said he didn't have the language right now. **CHAIRMAN DEVLIN** suggested **Mr. Kloker** meet with **Mr. Martin.**

Closing by Sponsor:

REP. QUILICI closed with no further comment.

HEARING ON HB 545

Opening Statement by Sponsor:

REP. JUDY MURDOCK, HD 6, Big Horn and Yellowstone County, stated HB 545 concerns commercial property owners who will be making improvements to their property to comply with the American Disabilities Act. She explained it applies to improvements made to existing or new commercial buildings after December 1, 1995. She stated the exemption must be applied for by March 1st of the tax year.

Proponents' Testimony:

Dennis Burr, Montana Taxpayers Association, commented the bill provides reduced costs to the Department of Revenue for providing the forms.

David Owen, Montana Chamber of Commerce, stated the intent of the bill is appreciated. He said the cost of staying in business should not be an added tax burden.

Stuart Doggett, Montana Innkeepers, urged support for the bill.

Opponents' Testimony:

None

Informational Testimony:

None

Questions From Committee Members and Responses:

None

MONTANA SENATE
1995 LEGISLATURE
TAXATION COMMITTEE

ROLL CALL DATE March 30, 1995

NAME	PRESENT	ABSENT	EXCUSED	
MACK COLE	✓			
DELWYN GAGE	✓			Presenting a bill
LORENTS GROSFIELD	✓			
JOHN HARP	✓			
DOROTHY ECK	✓			Presenting a bill
BARRY "SPOOK" STANG	✓			
FRED VAN VALKENBURG	✓			PRESENTING A BILL - ARR. 8:4.
MIKE FOSTER, VICE CHAIRMAN	✓			
GERRY DEVLIN, CHAIRMAN	✓			

SEN:1995
wp.rollcall.man
CS-09

SENATE TAXATION
DATE March 30, 1995
NO. 1
NO. HB 587

HOUSE BILL 587

Title 16, Chapters 10 and 11

Cigarette Marketing and Taxation/Licensing and Minor Law

House Bill 587 is a housekeeping and clarification bill addressing the following:

*Simplifying language and format changes suggested by the Department of Revenue and industry and changes made by the Legislative Council

*Clarifying language to reflect current administration and industry practices

*Aligning definitions in both sections where appropriate to eliminate confusion

*Aligning current law with recent litigation--eliminating the wholesaler residency requirement

*Repealing 16-10-401 and proposing a new section to replace the criminal penalty with a civil penalty for violations of minimum price

*Clarifying the penalty language related to the Minor Law (16-11-308)

SECTION BY SECTION ANALYSIS

SECTION 1

Stores like Price/Costco and Sam's Club operate as both a wholesale and retail outlet. The change clarifies that stores may operate as both a licensed wholesaler and a licensed retailer. Removed language found in a definition statute (16-10-103(12(b) and provided a new section applicable to both chapters.

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The 1993 Legislature passed the Youth Access to Tobacco Products Control Act - The Minor Law. This change will clarify that violations of the Act are subject to civil penalties and are handled in justice court.

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Selling cigarettes below the state minimum price is a violation of the minimum price law. The reason a person sold cigarettes below the state minimum price is not the violation, the violation is that he/she sold the cigarettes below the state minimum price. The requirement to prove intent makes the statute impossible to enforce.

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The department is responsible for setting and enforcing the minimum price of cigarettes. The proposed changes will clear up the language necessary to set one minimum price for each kind of cigarette sold in Montana and will clarify the accounting practices used for a "cost showing" to change the statutory presumption of the cost of doing business(wholesaler 5% retailer 10%). The department has historically set the minimum price using the manufacturers base cost of cigarettes. Montana does not allow any discounts off the manufacturer's invoice. Other states allow discounts off the manufacturers invoice. Montana has no control over the invoice price paid by out-of-state wholesalers. Therefore, out-of-state wholesalers could show that their invoice cost or replacement cost is lower than the price used by Montana in setting the minimum price. Replacement or invoice cost could be higher or lower than the minimum price set by the department depending on if there is an increase or decrease to the manufacturers basic cost.

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Each chapter has it's own definitions. The proposed changes would make the definitions the same in both chapters.

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(13)

This change is necessary because the industry has changed the way it does business over the years. A distributor may approach a manufacturer and request the manufacturer to make a special cigarette for the distributor. The distributor is the only one that can sell the special cigarettes to licensed wholesalers in Montana.

SECTION 5

This change is necessary because we propose to repeal 16-10-401.

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The proposed changes will clear up the language and will clarify the accounting practices used for a "cost survey".

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Each chapter has it's own definitions. The proposed changes would make the definitions the same in both chapters.

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resident in this state. They prevailed in court showing that we were causing them financial harm and hardship by not licensing them as a wholesaler. The stipulated judgement required us to license them as a wholesaler and let them stamp at their out-of-state warehouse. Therefore, the present statute must be changed to conform to the court decision by eliminating the residency requirement. Today we have 8 out-of-state wholesalers.

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The section aligns the penalties for unpaid cigarette tax with the other taxes we administer.

SECTIONS 25, 26, 27

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SECTIONS 29

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section. Therefore, this section may be need to be coordinated with other legislation.

SECTION 34

Codification

SECTION 35

We propose to repeal section 16-10-401 - Criminal penalty for selling cigarettes below minimum price.

SECTION 36

The effective date of this bill is July 1, 1995

STATE OF MONTANA

MINIMUM CIGARETTE COSTS

29-Mar-95
FULL PRICE BRANDS

	85mm's 100mm's 120mm's
MANUFACTURER'S LIST COST---------	$8.7900
(No cash, trade or any discounts of any type are allowed)	
FEDERAL TAX PER CARTON----------	$2.4000
STATE TAX PER CARTON----------	$1.8000
	$12.9900
5% PRESUMED COST OF DOING BUSINESS-------	$0.6495
.0075 CARTAGE----------	$0.0974

(Addition of $12.99 + $0.6495 + $0.0974 = $13.7369)

COST TO WHOLESALER----------	$13.74

(10% * $13.74 = $1.38)

10% PRESUMED COST OF DOING BUSINESS-------	$1.38
COST TO RETAILER----------	$15.12
PER PACK----------	$1.52

DATE March 30, 1995

SENATE COMMITTEE ON Taxation

BILLS BEING HEARD TODAY: HB 545 Rep. Murdock HB 562 Rep. Wennemar HB 587 Rep. Pavlici HB 588 Rep. Ohs

< ■ > PLEASE PRINT < ■ >

Name	Representing	Bill No.	Check One: Support	Oppose
Ruth McGillivray	Mt. Assoc Nurs	562	X	
Greg Chadderdon	Mtn Assoc Nursery	562	X	
Wesley Delaney	MTN Ass. Nursery	562	X	
Bill Baker	DOR	587	X	
Chas Maberg	DOR	587	✓	
Dwight Walton	MT Assoc Nursery	562	✓	
Michael Hirst	MT Assn. Nurserymen	562	✓	
Dennis Burr	MonTax	HB 545 HB 588	✓	
Stuart Doggett	MT Innkeepers	HB 545	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

REGISTER.F10

MINUTES

MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON TAXATION

Call to Order: By **CHAIRMAN GERRY DEVLIN**, on April 7, 1995, at 8:00 a.m.

ROLL CALL

Members Present:
Sen. Gerry Devlin, Chairman (R)
Sen. Mike Foster, Vice Chairman (R)
Sen. Mack Cole (R)
Sen. Delwyn Gage (R)
Sen. Lorents Grosfield (R)
Sen. John G. Harp (R)
Sen. Dorothy Eck (D)
Sen. Barry "Spook" Stang (D)
Sen. Fred R. Van Valkenburg (D)

Members Excused: None

Members Absent: None

Staff Present: Jeff Martin, Legislative Council
Renée Podell, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing:
Executive Action: HB 587, HB 90, HB 363, HB 497, HB 346 (discussion)

EXECUTIVE ACTION ON HB 587

Motion/Vote: **SEN. BARRY "SPOOK" STANG MOVED AMENDMENTS TO HB 587** (hb058701.ajm). **MOTION CARRIED UNANIMOUSLY.**

Discussion: None

Motion/Vote: **SEN. STANG MOVED HB 587 BE CONCURRED IN AS AMENDED. MOTION CARRIED UNANIMOUSLY.**

EXECUTIVE ACTION ON HB 90

Motion: **SEN. DELWYN GAGE MOVED AMENDMENTS TO HB 90** (hb009002.ajm).

MONTANA SENATE
1995 LEGISLATURE
TAXATION COMMITTEE

ROLL CALL

DATE April 7, 1995

NAME	PRESENT	ABSENT	EXCUSED
MACK COLE	✓		
DELWYN GAGE	✓		
LORENTS GROSFIELD	✓		
JOHN HARP	✓		
DOROTHY ECK	✓		
BARRY "SPOOK" STANG	✓		
FRED VAN VALKENBURG	✓		
MIKE FOSTER, VICE CHAIRMAN	✓		
GERRY DEVLIN, CHAIRMAN	✓		

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SENATE STANDING COMMITTEE REPORT

April 7, 1995

MR. PRESIDENT:
We, your committee on Taxation having had under consideration HB 587 (third reading copy -- blue), respectfully report that HB 587 be amended as follows and as so amended be concurred in.

Signed: _____
Senator Gerry Devlin, Chair

That such amendments read:

1. Page 23.
Following: line 3
Insert: "NEW SECTION. **Section 36. Coordination instruction.** If House Bill No. 539 is passed and approved and if it includes a section that amends 16-11-308 by imposing a tobacco education fee, then [sections 2 and 33 of this act], amending 3-10-301 and 16-11-308, respectively, are void."
Renumber: subsequent section

-END-

Amd. Coord.
Sec. of Senate

_____
Senator Carrying Bill

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